

Original filed 2/14/07

NOT FOR CITATION
IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

SPENCER RAWLINS BRASURE,)	No. C 06-5823 JF (PR)
)	
Petitioner,)	ORDER OF DISMISSAL;
)	DENYING PETITIONER'S
vs.)	MOTIONS AS MOOT; NO
)	FILING FEE IS DUE
ROBERT AYERS, Warden, et al.,)	
)	
Respondents.)	
)	(Docket Nos. 2, 3)

Petitioner, a state prisoner proceeding pro se, filed the instant petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. Petitioner's claim concerns the conditions of his confinement at San Quentin State Prison. Petitioner challenges the prison's collection of court-ordered restitution while his Ventura Superior Court criminal judgment and conviction is on appeal. Petitioner has filed a grievance through the prison administrative appeal process and exhausted his claim in state court.

The Supreme Court has declined to address whether a challenge to a condition of confinement may be brought under habeas. See Bell v. Wolfish, 441 U.S. 520, 526 n.6 (1979); Fierro v. Gomez, 77 F.3d 301, 304 n.2 (9th Cir.), vacated on other grounds, 519 U.S. 918 (1996). However, the Ninth Circuit has held that "habeas jurisdiction is absent,

1 and a § 1983 action proper, where a successful challenge to a prison condition will not
2 necessarily shorten the prisoner's sentence." Ramirez v. Galaza, 334 F.3d 850, 859 (9th
3 Cir. 2003) (implying that claim, which if successful would "necessarily" or "likely"
4 accelerate the prisoner's release on parole, must be brought in a habeas petition). The
5 preferred practice in the Ninth Circuit has been that challenges to conditions of
6 confinement should be brought in a civil rights complaint. See Badea v. Cox, 931 F.2d
7 573, 574 (9th Cir. 1991) (civil rights action is proper method of challenging conditions of
8 confinement); Crawford v. Bell, 599 F.2d 890, 891-92 & n.1 (9th Cir. 1979) (affirming
9 dismissal of habeas petition on basis that challenges to terms and conditions of
10 confinement must be brought in civil rights complaint).

11 Accordingly, the Court dismisses this habeas action because Petitioner's claim
12 concerning the collection of his restitution order does not challenge the duration of his
13 conviction or sentence. Petitioner's claims are more appropriately addressed in a civil
14 rights complaint pursuant to 42 U.S.C. §1983.

15 CONCLUSION

16 The petition for writ of habeas corpus is DISMISSED without prejudice.
17 Petitioner's motion to proceed in forma pauperis and motion for appointment of counsel
18 (docket nos. 2, 3) are DENIED as moot. No filing fee is due. Petitioner may re-file his
19 claims in a new action under a civil rights complaint pursuant to 42 U.S.C. §1983 on the
20 enclosed form. Petitioner shall include any supporting documentation with his new
21 complaint, as the instant case will be closed. The Clerk shall terminate all pending
22 motions and close the file.

23 IT IS SO ORDERED.

24 DATED: 2/14/07

25 
JEREMY FOGEL
United States District Judge

1 A copy of this ruling was mailed to the following:

2 Spencer Rawlins Brasure
3 P-10000
4 San Quentin State Prison -Death Row
5 San Quentin, CA 94974
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